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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 OAKLAND DIVISION  
14

15  
16 IN RE PLAID INC. PRIVACY LITIGATION  
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19 THIS DOCUMENT RELATES TO:

20 ALL ACTIONS  
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Case No. 4:20-cv-03056-DMR

**SUPPLEMENTAL REQUEST FOR JUDICIAL  
NOTICE IN SUPPORT OF PLAID INC.'S  
REPLY IN SUPPORT OF MOTION TO  
DISMISS PLAINTIFFS' CONSOLIDATED  
AMENDED COMPLAINT**

Date: TBA  
Time: 1:00 p.m.  
Dept: Courtroom 4 – 3<sup>rd</sup> Floor  
Judge: Donna M. Ryu

Trial Date: None Set  
Date Action Filed: May 4, 2020

1     **I.     DOCUMENTS SUBJECT TO THIS REQUEST**

2     Plaid Inc. (“Plaid”) requests the Court take judicial notice of the following documents:

- 3     1.     **Exhibit A:** Plaid’s Privacy Policy as of March 26, 2015, effective November 11,  
4     2013, available at <https://web.archive.org/web/20150326011404/https://www.plaid.com/legal/>
- 5     2.     **Exhibit B:** Plaid’s Privacy Policy as of October 10, 2014, effective November 11,  
6     2013, available at <https://web.archive.org/web/20141010160817/www.plaid.com/legal/>
- 7     3.     **Exhibit C:** Plaid’s Privacy Policy as of March 19, 2016, effective November 11,  
8     2013, available at <https://web.archive.org/web/20160319102837/www.plaid.com/legal/>
- 9     4.     **Exhibit D:** Plaid’s Privacy Policy as of September 19, 2015, effective November  
10    11, 2013, available at <https://web.archive.org/web/20150919214748/www.plaid.com/legal/>
- 11    5.     **Exhibit E:** Plaid’s End User Privacy Policy as of January 1, 2019, effective June  
12    14, 2018, available at <https://web.archive.org/web/20190101181607/https://plaid.com/legal/>
- 13    6.     **Exhibit F:** Plaid’s End User Policy as of May 30, 2019, effective May 29, 2019,  
14    available at [https://web.archive.org/web/20190530174759/https://plaid.com/legal/#end-user-](https://web.archive.org/web/20190530174759/https://plaid.com/legal/#end-user-privacy-policy)  
15    privacy-policy
- 16    7.     **Exhibit G:** Plaid’s End User Privacy Policy as of January 1, 2020, effective  
17    December 30, 2019, available at  
18    <https://web.archive.org/web/20200101210746/https://plaid.com/legal/>

19    **II.    ARGUMENT**

20    Plaid requests that the Court take judicial notice of the above materials because they are  
21    relevant to considering the sufficiency of the claims in Plaintiff’s Consolidated Amended  
22    Complaint (“CAC”). In connection with its Motion to Dismiss (ECF No. 78), Plaid previously  
23    sought judicial notice of certain materials including its current Privacy Policy<sup>1</sup>, which is referenced  
24    and quoted at length in the CAC. (ECF No. 81.) Plaintiffs oppose judicial notice of those materials  
25    on the ground that different versions were in place when certain Plaintiffs linked their payments  
26    apps to their financial institutions. (EFC No. 109.) Plaid believes those objections are meritless  
27    given the heavy reliance placed on the current Plaid Link flow and current Privacy Policy in the

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<sup>1</sup> In this motion, current means current as of December 11, 2020, the date of this filing.

1 CAC, and maintains the Court should consider the materials submitted in its initial Request for  
2 Judicial Notice. In the event the Court wishes to review the prior versions of the Privacy Policy,  
3 Plaid seeks judicial notice of the documents listed herein, which show that the prior versions of  
4 Plaid's Privacy Policy contain the same materials terms as the current version for purposes of  
5 assessing the consent issues raised in Plaid's Motion to Dismiss.

6 Exhibits A-G are subject to judicial notice because they are publicly available documents  
7 currently accessible through the Wayback Machine website of the Internet Archive. In general, a  
8 court may take judicial notice of facts "not subject to reasonable dispute" that are either (1)  
9 "generally known within the trial court's territorial jurisdiction"; or (2) "can be accurately and  
10 readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid.  
11 201(b). Courts routinely take judicial notice of website contents because they are capable of "ready  
12 and accurate determination." See, e.g., *Frances Kenny Family Tr. v. World Savs. Bank FSB*, No.  
13 04-cv-3724, 2005 WL 106792, at \*1 n.1 (N.D. Cal. Jan. 19, 2005) (taking judicial notice of content  
14 on plaintiffs' website); *Denius v. Dunlap*, 330 F.3d 919, 926 (7th Cir. 2003) (district court abused  
15 discretion by denying party's request for judicial notice of information on government agency's  
16 website); *Caldwell v. Caldwell*, No. C 05-4166 PJH, 2006 WL 618511, at \*4 (N.D. Cal. Mar. 13,  
17 2006); *Opperman v. Path, Inc.*, 205 F. Supp. 3d 1064, 1069 n.3 (N.D. Cal. 2016) (taking judicial  
18 notice of online policies as they "were publicly available on [a] website and their existence [could  
19 not] reasonably be questioned"); *Kinderstart.com, LLC v. Google, Inc.*, No. C 06-2057 JF (RS),  
20 2007 WL 831806, at \*21 n.20 (N.D. Cal. Mar. 16, 2007) (taking judicial notice of "web-page  
21 printouts"); *Datel Holdings Ltd. v. Microsoft Corp.*, 712 F. Supp. 2d 974, 983, 985 (N.D. Cal. 2010)  
22 (taking judicial notice of Microsoft's software license, Terms of Use, and website printouts).

23 Court take judicial notice specifically of policies "available through the Wayback Machine  
24 as facts that can be accurately and readily determined from sources whose accuracy cannot  
25 reasonably be questioned." E.g., *Erickson v. Neb. Mach. Co.*, No. 15-cv-1147, 2015 WL 4089849,  
26 at \*1 n.1 (N.D. Cal. July 6, 2015) (citations omitted); see *Sabatini v. Price*, No. 17-cv-1597, 2018  
27 WL 1638258, at \*5 n.6 (S.D. Cal. Apr. 5, 2018), *aff'd sub nom. Sabatini v. Azar*, 749 F. App'x 588  
28 (9th Cir. 2019) (taking judicial notice of website via Wayback Machine for the purpose of

1 identifying information that was available to plaintiff); *Craigslist, Inc. v. DealerCMO, Inc.*, No.  
2 16-cv-1451-VC, 2017 WL 6334142, at \*3 n.3 (N.D. Cal. Apr. 11, 2017) (“it is likely . . . appropriate  
3 to take judicial notice of the appearance of the listed websites in the past,” based on the Wayback  
4 Machine) (citation omitted); *United States ex rel. Hong v. Newport Sensors, Inc.*, No. 13-cv-1164-  
5 JLS (JPRx), 2016 WL 8929246, at \*3 (C.D. Cal. May 19, 2016) (“district courts in this circuit have  
6 routinely taken judicial notice of content from the Internet Archive's Wayback Machine pursuant  
7 to this rule, as we do here”) (collecting cases).; *UL LLC v. Space Chariot Inc.*, 250 F. Supp. 3d 596,  
8 604 n.2 (C.D. Cal. 2017) (collecting cases). Exhibits A-G are historical versions of Plaid’s Privacy  
9 Policy available on the Wayback Machine at the specific URLs noted above and are properly  
10 subject to judicial notice under this established precedent. Moreover, Plaintiffs’ CAC directly  
11 quotes from Plaid’s 2016 Privacy Policy and pulled this document from the WayBack Machine.  
12 CAC ¶ 90, n.70. Plaintiffs can hardly object to the authenticity or provenance of a website on  
13 which they base their own allegations. *Kniesel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005)(a  
14 court must consider documents not attached to a pleading if they are incorporated by reference);  
15 *Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th Cir. 1998) (courts may consider documents on which  
16 the complaint “necessarily relies.”).

17 As noted in the Somvichian Declaration in support of this Request, Exhibits A-G were in  
18 place when Plaintiffs allegedly linked their payment apps to their financial institutions and contain  
19 materially the same disclosures as the current Privacy Policy.

### 20 **III. CONCLUSION**

21 For the foregoing reasons, Plaid respectfully requests that the Court take judicial notice  
22 Exhibits A-G to the Somvichian Declaration.

23 Dated: December 11, 2020

COOLEY LLP

24  
25 By: /s/ Whitty Somvichian  
26 Whitty Somvichian

27 Attorneys for Defendant Plaid Inc.

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